No. _____

In the Supreme Court of the United States

MID-ATLANTIC MARKET DEVELOPMENT COMPANY, LLC, *et al.*,
Petitioners,

v.

MORAN FOODS, INC., d/b/a SAVE-A-LOT, LTD.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Did the Federal Reserve Board exceed its power to enact regulations under the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, by revising a regulation, 12 C.F.R. § 202.2(e), which excluded guarantors from the definition of "applicant" to specifically include guarantors within that definition?

II. Does a violation of the Equal Credit Opportunity Act provide an affirmative defense to a victim of discrimination in an action brought to enforce an unlawful guaranty?

RULE 14.1(b) STATEMENT

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Defendants-Appellees and Petitioners: Mid-Atlantic Market Development Company, LLC, Midwest Markets, LLC, Roger V.S. Camp and Susan Camp.

Plaintiff-Appellant and Respondent: Moran Foods, Inc. d/b/a Save A Lot, Ltd.

RULE 29.6 DISCLOSURE STATEMENT

Midwest Markets, LLC is a wholly owned subsidiary of Mid-Atlantic Market Development Company, LLC.

There is no publicly-held company owning 10% or more of the stock of either Mid Atlantic Market Development Company, LLC or Midwest Markets, LLC.

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PETITION FOR A WRIT OF CERTIORARI

Mid-Atlantic Market Development Company, LLC, Midwest Markets, LLC, Roger V.S. Camp and Susan Camp respectfully petition for a writ of certiorari to review the opinion of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit, dated February 5, 2007, is officially reported at 476 F.3d 436, and is reproduced at App. B, 2a-12a. The memorandum opinion and order of the United States District Court for the Northern District of Indiana, South Bend Division, dated August 2, 2005, is unofficially reported at 2005WL2136363 and is reproduced at App. B, 13a-15a. The district court's memorandum and order, dated April 26, 2002, limiting Susan Camp's Equal Credit Opportunity Act claims to a counterclaim for recoupment instead of an affirmative defense is unreported and is reproduced at App. E, 25a-81a.

JURISDICTION

The opinion of the United States Court of Appeals for the Seventh Circuit sought to be reviewed was entered on February 5, 2007. A timely-filed petition for rehearing was denied on March 5, 2007. App. A, 1a. This petition is timely under 28 U.S.C. § 2101(c) and Supreme Court Rule 13.1 because it is being filed within ninety (90) days after the denial of the petition for rehearing. This Court has jurisdiction to review the opinion of the United States Court of Appeals for the Seventh Circuit pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions involved are 15 U.S.C. § 1691(a)(1), 12 C.F.R. § 202.2(e), and 12 C.F.R. § 202.7(d). The relevant statutory provisions are reproduced at App. F, 82a-83a.

STATEMENT OF THE CASE

This petition arises from an action filed by Moran Foods, Inc. d/b/a Save-A-Lot, Ltd. ("SAL") seeking damages against Mid-Atlantic Market Development Company, LLC and Midwest Markets, LLC ("Companies") arising out of contracts between the parties. Mid-Atlantic Markets, LLC was added as a defendant in an amended complaint. Roger and Susan Camp were included as defendants based on personal guaranties signed by the Camps.

The defendants filed an answer and counterclaim to SAL's amended complaint. The Companies asserted in the counterclaim, *inter alia*, that SAL breached the contract by failing to provide accounting services as specified by the contract. Susan Camp filed a counterclaim alleging that SAL violated the Equal Credit Opportunity Act, 15 U.S.C. § 1691, by requiring her to sign a personal guaranty based on her status as Roger Camp's wife.

The district court granted in part SAL's motion for partial summary judgment on its claims. The court determined that damages, including prejudgment interest at the rate of twenty-two percent (22%) per annum as specified in the contracts, totaled Two Million Two Hundred Sixty-Nine Thousand Six Hundred Fifty-Two Dollars and Seventy-Six Cents ($2,269,652.76).

The case proceeded to a jury trial on two of the counterclaims, breach of contract and violation of the ECOA. The jury returned a verdict in favor of the Companies on the breach of contract claim in the amount of Three Million Six Thousand Three Hundred Fourteen Dollars ($3,006,314.00) and in favor of Susan Camp on the ECOA claim in the amount of Fifty Thousand Dollars ($50,000.00). More than one year later, the district court issued a memorandum and order entering judgment in which it determined that the jury verdict in favor of the Companies acted as a complete setoff of the original judgment in favor of SAL and ordered that neither SAL, nor the Companies, owed anything to the other. The court also awarded Susan Twenty-One Thousand Four Hundred Twenty-Eight Dollars and Fifty-Seven Cents ($21,428.57) representing three-sevenths (3/7) of the amount awarded by the jury because four of the seven guaranties at issue were signed beyond the applicable statute of limitations.

SAL filed a motion for judgment as a matter of law or, in the alternative, for a new trial. The district court, among other rulings, held that the evidence was sufficient to support the jury's verdict in favor of both the Companies. App. 15a.

SAL appealed to the United States Circuit Court for the Seventh Circuit. Among the issues raised were the sufficiency of the evidence to support the award in favor of the Companies and whether Susan Camp was an "aggrieved applicant" under the ECOA. In addition to responding to those arguments in the appellees' brief, Susan Camp also asserted that SAL waived any challenge to the ECOA judgment because it was not identified in SAL's notice of appeal. Susan also filed a cross-appeal asserting that the district court erred in ruling that her ECOA claims must be raised as a counterclaim for recoupment, and not as an affirmative defense to the action on the guaranty. Susan also

asserted that the district court erred in limiting evidence of her damages, specifically omitting evidence of the underlying judgment against Susan as evidence of damages.

The Seventh Circuit Court of Appeals reversed the judgment in favor of the Companies and remanded to the district court to enter judgment in favor of SAL on the counterclaim for breach of contract on the basis that the evidence did not support the judgment amount. The Court mandated that judgment be entered in favor of SAL despite the fact that SAL conceded that it breached the contract and, further, that the undisputed evidence established damages other than those awarded by the jury.

With respect to the ECOA claims, the Court doubted that the statute "can be stretched far enough to allow" the Federal Reserve Board's definition of "applicant" to include a guarantor. App. 10a. The Court noted that: "There is nothing ambiguous about 'applicant' and no way to confuse an applicant with a guarantor." App. 10a. The Court further noted that the Federal Reserve Board's regulatory definition of "applicant" as including a guarantor: "opens vistas of liability that the Congress that enacted the act would have been unlikely to accept." App. 10a. As an alternative basis for the Court's reversal of Susan's ECOA claim, the Seventh Circuit ruled that despite undisputed evidence that at the time of the application, Roger, as an applicant and guarantor, was determined by SAL to be fully creditworthy and that Susan was required to sign only as a matter of company policy, Susan failed to prove discrimination because: "sound commercial practice unrelated to any stereotypical view of a wife's role for [SAL] to require that she guaranty the debt along with her husband." App. 12a.

REASONS FOR GRANTING THE PETITION

In enacting 15 U.S.C. § 1691, Congress made it unlawful for any creditor to, among other things, discriminate against any applicant with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex or marital status, or age. The Federal Reserve Board promulgated regulations which originally defined "applicant" as excluding guarantors. 12 C.F.R. § 202.2(e)(1985). In 1985, the Federal Reserve Board revised the regulation to include guarantors within the definition of "applicant." This Court has never addressed the Federal Reserve Board's power to define "applicant" as including guarantors. The Seventh Circuit opinion is the first reported case calling into doubt the Federal Reserve Board's power to do so and creates a conflict with other federal courts which have unanimously included guarantors within the definition of "applicant" under the revised regulation.

This Court should grant certiorari to confirm the Federal Reserve Board's power to revise its own regulation to include guarantors within the definition of applicant after initially excluding guarantors. This would resolve a conflict between the Seventh Circuit opinion in the instant case and prior federal court opinions.

The district court ruled that Susan's ECOA claims could be raised only as counterclaims, and not affirmative defenses to SAL's action on the guaranties. This ruling highlights an ongoing conflict between federal courts regarding the effect of an illegal guaranty under the ECOA. Although the Seventh Circuit failed to address Susan's argument that a violation of the ECOA should be treated as an affirmative defense, or at least render any illegal guaranty invalid, a conflict between

the district court's opinion and other federal case law nevertheless exists.

This Court should grant certiorari to resolve the conflict regarding whether a violation of the ECOA can be raised as an affirmative defense to the enforcement of a judgment on an illegal guaranty or is limited to a counterclaim for specified damages.

ARGUMENT

I. THE SEVENTH CIRCUIT'S OPINION THAT THE ECOA CANNOT BE "STRETCHED FAR ENOUGH" TO ALLOW THE FEDERAL RESERVE BOARD TO INCLUDE GUARANTORS WITHIN THE DEFINITION OF "APPLICANT" CREATES A CONFLICT WITH ALL PRIOR REPORTED FEDERAL CASES WHICH HAVE GIVEN EFFECT TO THE REVISED REGULATION.

Although the Seventh Circuit stopped short of explicitly ruling that the Federal Reserve Board exceeded its authority in including guarantors within the definition of "applicant," the Court did state that it doubted: "that the statute could be stretched far enough to allow this interpretation." App. 10a. The Court also noted that: "There is nothing ambiguous about 'applicant' and no way to confuse an applicant with a guarantor.' App. 10a. These statements by the Court are not only contrary to 12 C.F.R. § 202.2, they also conflict with the Ninth Circuit Court of Appeals' decision in *Silverman v.*

Eastrich Multiple Investor Fund, L.P., 51 F.3d 28 (3rd Cir. 1995).[1]

The Seventh Circuit's opinion cites no case, federal or state, which has ruled that the Federal Reserve Board exceeded its authority in including guarantors within the definition of "applicant." In fact, the Court has set itself apart from the numerous federal and state cases which have given effect to the revised regulation. *See, e.g.*, *Stornawaye Properties, Inc. v. Moses*, 76 F.Supp.2d 607 (E.D. Pa. 1999); *F.D.I.C. v. Medmark, Inc.*, 897 F.Supp. 511 (D. Kan. 1995); *Integra Bank/Pittsburgh v. Freeman*, 839 F.Supp. 326 (E.D. Pa. 1993); *Stern v. Espirito Santo Bank of Florida*, 791 F.Supp. 865 (S.D. Fla. 1992); *Still v. Cunningham*, 94 P.3d 1104 (Alaska 2004); *Cadle Co. v. Vargas*, 771 N.E.2d 179 (Mass. App. 2002); *Southwestern Pennsylvania Regional Council, Inc. v. Gentile*, 776 A.2d 276 (Pa. Super., 2001); *BayBank v. Bornhofft*, 694 N.E.2d 854 (Mass. 1998); *Hammons v. Ehney*, 924 S.W.2d 843 (Mo. 1996); *Douglas County National Bank v. Pfeiff*, 809 P.2d 1100 (Colo. App. 1991). Neither the Seventh Circuit, nor SAL, has cited any authority for the proposition that guarantors are not properly contained within the definition of "applicant" under the Federal Reserve Board's regulations.

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[1] The Seventh Circuit opinion cites *Anderson v. United Finance Co.*, 666 F.2d 1274, 1276-77 (9th Cir. 1982) as a case which "assumes the validity of the regulation without discussion of the point." App. 10a. *Anderson*, however, involved neither a guarantor nor the inclusion of a guarantor within the definition of "applicant." The Federal Reserve Board's revised regulation which included guarantors within the definition of "applicant" did not become effective until October 1, 1986, more than four and one-half years after the decision in *Anderson*.

To the extent that the Seventh Circuit's opinion does not create an explicit conflict with *Silverman* because the Court also based its reversal of the ECOA judgment on a factual determination of lack of discrimination, that determination conflicts with the definition of "discrimination" as defined by 12 C.F.R. § 202.7(d) and as interpreted by the Fourth Circuit Court of Appeals in *Riggs National Bank of Washington, D.C. v. Lynch*, 36 F.3d 370 (4th Cir. 1994). In this regard, the Seventh Circuit did not define "discrimination" in ruling that there was no evidence that SAL discriminated against Susan. However, in the context of the Equal Credit Opportunity Act, the relevant section of regulations defining discrimination is 12 C.F.R. § 202.7(d). The regulation states in relevant part:

> (d) Signature of spouse or other person –
>
> > (1) Rule for qualified applicant. Except as provided in this paragraph, a creditor shall not require the signature of an applicant's spouse or other person other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested.
> >
> > * * *
> >
> > (4) Secured credit. If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien,

> pass clear title, waive inchoate rights, or assign earnings.

This regulation has been interpreted by the Fourth Circuit Court of Appeals as requiring a lender to make a determination of the creditworthiness of the applicant before requiring a spouse to sign a guaranty. In *Riggs National Bank of Washington, D.C. v. Linch*, 36 F.3d 370 (4th Cir. 1994), the Court stated:

> Appellants next contend that the district court erred in concluding that Riggs did not violate the ECOA by requiring Marcia Linch to execute a personal guaranty of the note. More specifically, appellants argue that it was error for the district court to find that Riggs required Marcia Linch to be a guarantor only *after* it had determined that Samuel Linch was not independently creditworthy for the amount of the loan involved. After a review of the evidence of record below, we find no error.
>
> It is well-established that the ECOA, 15 U.S.C. § 1691 *et seq.*, and its implementing regulations, 12 C.F.R. § 202.1 *et seq.*, prohibit a creditor from requiring a spouse's signature on a note when the applicant individually qualifies for the requested credit. *See, e.g., Anderson v. United Finance Co.*, 666 F.2d 1274, 1277 (9th Cir. 1982). Specifically, the ECOA provides that it 'shall be unlawful for any creditor to discriminate against any applicant with respect to any aspect of a credit transaction, . . . on the basis of . . . marital status . . . .' 15 U.S.C. § 1691(a). The regulations implementing the ECOA further provide that 'a creditor shall not require the signature of an applicant's spouse . . . , other than a

> joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount in terms of the credit requested' 12 C.F.R. § 202.7(d)(1).
>
> In applying these provisions to the facts of record here, the district court properly recognized that the determinative factual issue was whether Riggs had made a determination that Samuel Linch was not independently creditworthy for the requested loan before it required that Marcia Linch also be a personal guarantor of the loan. After hearing testimony and receiving evidence at the trial, the district court found as a fact that Riggs did not require Marcia Linch to be an additional guarantor until *after* it had learned that Samuel Linch did not individually own many of the substantial assets which he had listed on the 'personal' financial statement submitted by him to Riggs with the original loan application. There is little doubt that Samuel Linch failed to inform Riggs that many of the assets listed in his personal financial statement were jointly owned by him and his wife. The district court further found that Riggs had properly made a contemporaneous determination that Samuel Linch was not independently creditworthy for the amount of the requested loan, and that it was only after this determination was made that Riggs requested that Marcia Linch also be a guarantor of the loan.

36 F.3d at 374.

Unlike the situation in *Riggs*, the evidence most favorable to the prevailing party in the present case establishes that SAL required Susan to sign the guaranty only because it was SAL's policy to require spousal guaranties. The evidence most

favorable to the prevailing party further establishes that not only did SAL never make a determination that Roger was not independently creditworthy, SAL, in fact, assumed that Roger was creditworthy.

Furthermore, contrary to the Seventh Circuit's ruling, the evidence most favorable to the judgment establishes that SAL did not rely on any financial statements involving joint assets. SAL's representative, Joe Higgs, then the Chief Financial Officer of SAL, testified that when he received the financial statement from Roger, he did not investigate it to any large degree. Higgs, at that time, had the understanding that Roger "had the wherewithal to purchase an existing independent store" because he had been in the grocery business before and had owned stores. When Higgs received the financial statement from Roger, he assumed that Roger had the wherewithal to own and operate the stores.

SAL never requested a financial statement from Susan. The title of the document provided to SAL by Roger indicated that it was the financial statement of "Roger V. S. Camp." The financial statement did not identify any property as jointly held.

Higgs contacted Roger after receiving the financial statement and made a joke of the fact that the numbers were added incorrectly. Higgs, however, did not ask Roger any questions about the financial statement or anything about Susan's financial condition. Higgs did not ask Roger to submit a financial statement on behalf of his wife. Additionally, Higgs did not ask if any of the assets on Roger's financial statement were jointly-held assets.

No one from SAL inquired of Roger whether any of the assets on the financial statement were jointly held or owned

by him individually. No one from SAL ever contacted Roger about financial statements. The financial statements have never been discussed since they were submitted. No one from SAL told Roger that his financial statements were not sufficient to meet its credit standards. SAL, in fact, informed Roger that his financial condition was sufficient.

The testimony of SAL's representative, Higgs, establishes that the Seventh Circuit erred in ruling that there was no evidence of discrimination. SAL discriminated against Susan by requiring her to sign a guaranty on behalf of her husband despite failing to make a determination that Roger alone was not creditworthy. Because Higgs' testimony is conclusive on the issue given the lower court's standard of review, it is quoted below.

> Q. Okay. When you received the financial statement, did you call Roger Camp with any questions?
>
> A. No, sir.
>
> Q. And it's true, isn't it, that in regards to Roger Camp's financial statement, the one you have just looked at, you didn't investigate it to any large degree?
>
> A. No, I did not.
>
> Q. And you did that because your understanding at the time you received it was that Roger Camp had the wherewithal to purchase an existing independent store and that because he had been in the grocery business before and had owned stores that you had concluded that he had the wherewithal to operate a Save-A-Lot store?

A. Yes, that's basically correct.

Like I said, he had already negotiated with this independent retail Save-A-Lot store operator to purchase his store. Apparently, that operator had agreed to the purchase and sale. When I received the documents, that's exactly my assumption, that he had clearly the financial wherewithal to purchase the store and operate it. And, again, I depended on our operational people to tell me that he had been in the grocery business and from an operational standpoint would not have a problem with operating the store.

* * *

Q. Your normal practice in your job, Mr. Higgs, was to ask for a spousal guaranty; isn't that true?

A. Yes.

The Seventh Circuit's opinion noted that: "In fact some $2.5 million of the $8.2 million in assets listed on Mr. Camp's credit application were actually owned by Mrs. Camp." App. 11a-12a. Higgs' testimony, however, establishes that despite the Seventh Circuit's observation, Roger nevertheless was creditworthy under SAL's standards. In this regard, Higgs testified that in the late 1990's, he would feel uncomfortable approving someone with "probably under a half a million dollars in net worth." Roger clearly had far more than the minimum amount required by Higgs and SAL.

The Seventh Circuit's opinion contains a discussion of the reasonable business practices of a lender when presented with a financial statement that includes residences. App. 12a.

Regardless of what reasonable business practices might entail, the fact of the matter is in the present case, SAL did not rely on the financial statements in entering the agreements with Mid-Atlantic nor did it investigate the financial statements. Instead, SAL assumed that Roger alone had the wherewithal to own and operate the grocery stores. SAL never made a determination that Roger was not creditworthy in an individual capacity. Absent such a determination, SAL violated the ECOA by requiring Susan to sign the guaranties.

II. THE DISTRICT COURT'S RULING THAT A VIOLATION OF THE ECOA CAN ONLY BE RAISED AS A COUNTERCLAIM AND NOT AS AN AFFIRMATIVE DEFENSE HIGHLIGHTS A CONFLICT AMONG FEDERAL COURTS.

There is no dispute that federal courts are split on the issue of whether the ECOA provides a guarantor an affirmative defense to the guaranty if it was obtained in violation of the statute. As noted by the district court in its April 26, 2002 order rejecting the ECOA as an affirmative defense, the issue is of "fairly recent vintage." App. 42a. Under the Federal Reserve Board's original regulations, guarantors were not included within the definition of "applicant." Consequently, the typical situation in which the ECOA came into play involved an applicant who was denied credit. In such cases, the applicant would never be sued by a creditor because the applicant did not obtain credit. There would, therefore, be no need to raise the ECOA as an affirmative defense. This situation was described by the district court as follows:

> Whether the ECOA constitutes a counterclaim or affirmative defense appears to arise from the 1986 promulgation of Regulation B. It would seem a rare

> scenario in which an 'applicant,' in the true sense of the word and as originally interpreted before 1986, would need to assert the ECOA as an affirmative defense. If the applicant were discriminatorily denied credit – the originally intended protection – the applicant would simply sue and would never be sued because she never received money in the first place to cause the creditor to sue. If the applicant were extended credit, but only with a guarantor's signature, the applicant obtained what she wanted and what the ECOA protects, and the ECOA violation would thus serve (in some eyes) to invalidate only the guarantor's, never the applicant's obligation. *See, e.g., Integra Bank/Pittsburgh v. Freeman*, 839 F.Supp. 326, 329-330 (E.D. Pa. 1993). In either case, the applicant has no need of the ECOA as an affirmative defense, and the issue seems only to come up with respect to guarantors.

App. 42a. The court's analysis essentially ignores the Federal Reserve Board's subsequent amendment to Regulation B which added guarantors to the definition of "applicant." The proper analysis requires the court to take into account that amendment.

The only reported case on the issue from a federal circuit court of appeals is *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28 (3rd Cir. 1995). The Third Circuit there reversed a determination that the ECOA cannot be used defensively. Instead, the Court ruled that a guarantor may raise the ECOA as a defense when a creditor attempts to collect on the guaranty which was executed in violation of the statute. In ruling that such an interpretation of the statute was in accord with the legislature's intent to curtail discrimination, the Court stated:

> Although the *Integra [Bank v. Freeman*, 839 F.Supp. 326 (E.D. Pa. 1993)] court noted that some courts have refused to grant relief from obligations under an unlawful credit instrument, we find the court's analysis of the ECOA persuasive:
>
> > Congress – in enacting the ECOA – intended that creditors not affirmatively benefit from proscribed acts of credit discrimination. To permit creditors – especially sophisticated credit institutions – to affirmatively benefit by disregarding the requirements of the ECOA would seriously undermine the congressional intent to eradicate gender and marital status based credit discrimination.
>
> *Integra*, 839 F.Supp. at 329. This interpretation of the statute best forwards its purposes, particularly in light of the inclusion of a broad remedial provision, § 1691e(c), in the ECOA. Furthermore, as the *Integra* court observed, '[t]his rule places a creditor in no worse position than if it had adhered to the law when the credit transaction occurred. A creditor may not claim to have relied factually upon a guarantor's assets if it has never requested nor received financial information regarding them. Furthermore, a creditor may not claim legal reliance on a signature that was illegally required in the first instance.' *Id.* at 329. (Footnote omitted.)

51 F.3d at 32-33. The "broad remedial provision" referred to by the Court, 15 U.S.C. § 1691e(c) provides in relevant part: "[u]pon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as

is necessary to enforce the requirements imposed under this subchapter."

The district court was concerned about the effect of a rule allowing the ECOA to be raised as affirmative defense would have on the underlying debt. App. 48a. The district court failed to recognize, however, that the underlying debt is not affected by the invalidation of an unlawful guaranty. The underlying debt, and any legally obtained guaranties, remain in effect. The Third Circuit noted as much in *Silverman*:

> If Atlantic did in fact violate the ECOA, then plaintiff may have a valid defense and obtain relief from her obligations in the guaranty. We note however that if plaintiff's guaranty is voided, this would not void the underlying debt obligation nor any other guaranties. *See Id.* [*Integra*, 839 F.Supp. at 329] ('[W]hile an ECOA violation should not void the underlying credit transaction[,] an offending creditor should not be permitted to look for payment to parties who, but for the ECOA violation, would not have incurred personal liability on the underlying debt in the first instance').

51 F.3d at 33.

Although *Silverman* is the only federal appellate case specifically addressing the issue, several district courts have reached the same conclusion. *See, e.g. Stornawaye Properties, Inc. v. Moses*, 76 F.Supp.2d 607, 613-614 (E.D. Pa. 1999); *F.D.I.C. v. Medmark, Inc.*, 897 F.Supp. 511, 514 (D. Kansas 1995); *Integra Bank/Pittsburgh v. Bremen*, 839 F.Supp. 326, 329-330 (E.D. Pa. 1993); *In re Farris*, 194 B.R. 931, 936 (E.D. Pa. 1996). The Seventh Circuit, although not discussing the issue in detail, also noted that the ECOA

was a defense in *United States v. Meadors*, 753 F.2d 590, 593 (7th Cir. 1985).

The district court's opinion notes a conflict between federal courts on whether a violation of the ECOA can be raised as an affirmative defense to an action on a guaranty. That conflict was not addressed by the Seventh Circuit opinion. This Court should grant this petition to resolve that conflict.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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